



Making Great Communities Happen

Connecticut Chapter of the American Planning Association Government Relations Committee

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POSITION STATEMENT

PLANNING AND DEVELOPMENT COMMITTEE – MARCH 2, 2012

BILL: HB 5320 – Act Concerning Bonds and Other Surety for Approved Site Plans and Subdivisions

OVERVIEW

This bill has been raised in response to concerns that the revisions to bonding authority and procedures, instituted by PA 11-79, have created uncertainty for land use regulators and developers seeking local site plan or subdivision approvals. CCAPA supports efforts to clarify the bonding provisions that apply to site plan and subdivision approval, so long as such clarifications retain the protections that the statutes have historically provided to towns and property purchasers. Specifically, CCAPA believes that the provisions in PA 11-79 allowing a developer or subdivider to determine when or if to file a performance bond to provide financial assurance to a town for the completion of required public improvements must be removed.

As CCAPA commented during the legislature's consideration of SB 860 in the 2011 session, "changes to accepted and effective growth management practices must be evaluated deliberately and with direct input from the municipal officials and professionals who are responsible for economic development, land use and municipal planning, and municipal finances." In our view, this principle was not applied to SB 860 in 2011 and as a result the legislation did not achieve its apparent goal of improving the land use approval process.

We appreciate the opportunity to assist the Committee with its consideration of this matter, and we are available to provide any further assistance necessary.

CCAPA POSITION

- CCAPA recommends that the Committee accept the changes in HB 5320 that a) clarify terminology; b) remove the mandatory acceptance of surety bonds as a form of financial security for site improvements; and c) allow a maintenance bond for a period of up to one year following acceptance of site improvements.
- CCAPA strongly recommends that the bonding authorization statutes specify that bond amount calculations may include an inflation factor in addition to a "contingency" factor.
- CCAPA strongly recommends that this bill be revised to remove the provisions in PA 11-79 that prohibit towns from requiring a bond ("financial security") for site improvements that are to be accepted by the town as a condition of approval for site plans and subdivisions.

- CCAPA does not support the proposed revision to §8-27 without further analysis of the issue to identify exactly what problem the change would address, what the actual impact of the change would be, and what alternatives may be available.
- The effective date of this bill should be as soon as possible or even retroactive to the effective date of PA 11-79.

ANALYSIS

As the Committee may be aware, considerable attention has been given to the uncertainty created by PA 11-79, in the form of workshops and discussions involving all affected interests. It appears that the proposed revisions in HB 5320 are intended to reflect, in part, those discussions.

The proposed language in HB 5320, applying to both site plan and subdivision approvals, includes revised terminology that removes confusion over the terms “bond”, “surety”, “site plan”, and “improvements”. These are useful and effective changes.

The proposed language retains the provision in PA 11-79 that a “contingency amount” as part of a financial guarantee calculation cannot exceed ten percent. However, neither the PA 11-79 language nor the proposed revisions clarify whether this “contingency” includes an inflation factor. This omission should be addressed.

The proposed revisions in HB 5320 remove the requirement in PA 11-79 that towns must accept surety bonds if proposed as a form of financial guarantee. The revisions also provide that towns may require a one year maintenance bond to ensure satisfactory installation and performance and interim maintenance subsequent to acceptance of public improvements by the town, which was prohibited by the provisions of PA 11-79. These are appropriate changes.

The proposed revision includes an unrelated amendment to §8-27 that would prohibit towns from denying a building permit for construction on unaccepted streets if part of an approved site plan or subdivision. Such a change requires further analysis to avoid creating the same problems that arose due to the incomplete consideration of the original language in PA 11-79.

The proposed revisions in HB 5320 do not change the provisions in PA 11-79 that prevent towns from requiring the filing of a bond (“financial guarantee”) to secure the development of “site improvements” prior to the issuance of a Certificate of Occupancy or the sale of a building lot (site plan and subdivision, respectively). This restriction creates significant financial and physical risk for Connecticut municipalities and must be addressed.

Based on replies to a request to our membership, many towns have experienced abandonment or failure to complete approved projects (29 out of 47 replies to date), often leaving the town with construction and maintenance responsibilities. While some of these projects were, in fact, bonded, such situations are not uncommon and bonding protections may not be available under the discretionary bonding provisions of PA 11-79. Construction of buildings on uncompleted and unaccepted roads aggravates the degree of risk to municipalities when projects are not completed by developers.

In response to the uncertainty and risks created by PA 11-79, many towns have revised or are revising land use regulations, in some cases to allow only conditional approvals.

We will provide updated results of our survey to the Committee as they become available.

Finally, we note that many municipalities are considering regulations changes to address PA 11-79 and it is likely that many developers are delaying decisions on projects pending the resolution of the uncertainty created by PA 11-79. For these reasons, the effective date of this bill should be as soon as possible or even retroactive to the effective date of PA 11-79.

FISCAL IMPACT

The provisions of this bill should not be expected to have any fiscal impact on municipalities. However, the failure of this bill, and its predecessor bill PA 11-79, to recognize the fiscal exposure of towns to the costs of repairing, removing, or maintaining uncompleted public improvements associated with site plan and subdivision approvals could result in significant fiscal impacts.

